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Letter from the Commissioner of Indian Affairs,
upon the action of the Department of the Interior
relating to the Kansas Indian lands in the State of
Kansas.

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LETTER

FROM THE

COMMISSIONER OF INDIAN AFFAIRS,

UPON

The action of the Department of the Interior relating to the Kansas Indian lands in the State of Kansas.

DECEMBER 11, 1871.—Referred with bill (S. 346) to the Committee on Indian Affairs. and ordered to be printed.

DEPARTMENT OF THE INTERIOR;
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 2, 1871.

SIR: In compliance with the memorandum of the honorable Assistant Secretary of the Interior, requesting a report of the action recently had relative to the Kansas Indian lands in the State of Kansas, I respectfully submit the following statement of the same, viz:

The right or claim of the Kansas tribe of Indians to the lands in question is guaranteed and recognized by the provisions of the treaties of June 3, 1825, (Stats. at Large, vol. 7, p. 244;) of January 14, 1846, (Stats. at Large, vol. 9, p. 842,) and of October 5, 1859, (Stats. at Large, vol. 12, p. 1111.) At the date last mentioned, the reserve of these Indians consisted of a tract twenty miles square, embracing in the aggregate about 256,000 acres of land, and it was provided in said treaty of 1859 as follows, viz:

ARTICLE 1. The Kansas Indians having now more lands than are necessary for their occupation and use, and being desirous of promoting settled habits of industry amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of their tribe owning an interest in their present reservation, to be cultivated and improved for their individual use and benefit, it is agreed and stipulated that that portion of their reservation commencing at the southwest corner of said reservation, thence north with the west boundary nine miles, thence east fourteen miles, thence south nine miles, thence west with the south boundary fourteen miles to the place of beginning, shall be set apart and retained by them for said purposes, and that out of the same there shall be assigned to each head of a family not exceeding forty acres, and to each member thereof not exceeding forty acres, and to each single male person of the age of twenty-one years and upwards, not exceeding forty acres of land, to include in every case, as far as practicable, a reasonable proportion of timber. One hundred and sixty acres of said retained lands, in a suitable locality, shall also be set apart and appropriated to the occupancy and use of the agency of said Indians, and one hundred and sixty acres of said lands shall also be reserved for the establishment of a school for the education of the youth of the tribe.

ARTICLE 2. The lands to be so assigned, including those for the use of the agency and those reserved for school purposes, shall be in as regular and compact a body as possible, and so as to admit of a distinct and well-defined exterior boundary, embrac-

cing the whole of them, and any intermediate portions or parcels of land or water not included in or made part of the tracts assigned in severalty.

Any such intermediate parcels of land and water shall be owned by the Kansas tribe of Indians in common, but in case of increase in the tribe or other cause rendering it necessary or expedient, the said intermediate parcels of land shall be subject to distribution and assignment in such manner as the Secretary of the Interior shall prescribe and direct. The whole of the land, assigned or unassigned in severalty, embraced within the said exterior boundary, shall constitute and be known as the Kansas Reservation, within and over which all laws passed, or which may be passed, by Congress, regulating trade and intercourse with the Indian tribes, shall have full force and effect. And no white person, except such as shall be in the employment of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the superintendent of Indian affairs or of the agent for the tribe.

ARTICLE 3. Said division and assignment of lands to the Kansas tribe of Indians in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him shall be final and conclusive. Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned respectively, and that they are for the exclusive use and benefit of themselves, their heirs and descendants; and said tracts shall not be alienated in fee, leased, or otherwise disposed of, except to the United States or to other members of the tribe, under such rules and regulations as may be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale, or forfeiture, until otherwise provided by Congress. Prior to the issue of said certificates, the Secretary of the Interior shall make such rules and regulations as he may deem necessary and expedient respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased persons; and should any of the Indians to whom tracts shall be assigned abandon them, the said Secretary may take such action in relation to the proper disposition thereof as in his judgment may be necessary and proper.

ARTICLE 4. For the purpose of procuring the means of comfortably establishing the Kansas tribe of Indians upon the lands to be assigned to them in severalty, by building them houses and by furnishing them with agricultural implements, stock animals, and other necessary aid and facilities for commencing agricultural pursuits under favorable circumstances, the lands embraced in that portion not stipulated, to be retained and divided as aforesaid, shall be sold, under the direction of the Secretary of the Interior, in parcels not exceeding one hundred and sixty acres each, to the highest bidder, for cash; the sale to be made upon sealed proposals, to be duly invited by public advertisement; and should any of the tracts so to be sold have upon them improvements of any kind, which were made by or for the Indians, or for Government purposes, the proposals therefor must state the price for both the land and improvements; and if, after assigning to all the members of the tribe entitled thereto their proportions in severalty, there shall remain a surplus of that portion of the reservation retained for that purpose, outside of the exterior boundary line of the lands assigned in severalty, the Secretary of the Interior shall be authorized and empowered, whenever he shall think proper, to cause such surplus to be sold in the same manner as the other lands to be so disposed of, and the proceeds thereof to be expended for their benefit in such manner as the Secretary of the Interior may deem proper.

These treaty provisions were carried into execution in the years 1862, '63, '64, and '69 by the assignment of lands in severalty to the Indians and for school and agency purposes, and by the setting apart of a diminished reservation, about nine by fourteen miles in extent, embracing about 80,000 acres of land, leaving an aggregate of 175,444.89 acres, designated and known as "Trust Lands." Of the latter, 37,786.76 acres had been sold prior to the year 1870, leaving 137,658.13 of Trust Lands now to be disposed of.

The subject of the sale of these lands was first presented for the consideration of the Department in a communication from this office, dated the 27th of April last, in which, after referring to previous correspondence on the subject, it was stated that the matter of the sale of said lands had been brought to the attention of this office by Superintendent Hoag, who stated that he had received from parties representing a colony of individuals who desired to settle upon said lands, a proposition for the purchase of the same in a body, for the probable sum of \$500,000, upon such terms as might be agreed upon. It was further stated in said office letter that this matter was brought to the atten-

tion of the Department for the reason that the Indians in question were in a starving condition, and it was most desirable that the lands should be disposed of for their benefit in such manner, not inconsistent with existing treaty stipulations, as should realize the largest amount.

Under date April 29th last, the honorable Secretary of the Interior acknowledged the receipt of this communication, and after reviewing the provisions of article 4 of the treaty hereinbefore quoted, directed the office to inform Superintendent Hoag that these lands could only be sold in the manner provided in said article. The honorable Secretary further directed that "this office take steps to cause all the lands included in the treaty aforesaid, including such portion of the diminished reservation lying outside of the exterior boundary line of the lands assigned in severalty, as remain after all assignments provided for by the treaty shall have been made, to be advertised and sold in such manner and under such rules and regulations as the treaty calls for;" that "the lands must be sold in parcels not exceeding 160 acres each, to the highest bidder, and for cash, upon sealed proposals invited by public advertisement," which advertisement should precede the sale at least sixty days, and be published in Kansas, Nebraska, St. Louis, Chicago, and New York papers.

Under date 22d May last, this office, in accordance with such instructions, submitted a schedule of the lands to be sold, being 137,786.76 acres of the trust lands, and 43,554.01 acres of the diminished reserve, taken from the west and south portions of the same, leaving the allotted lands intact and in a compact body in the north and east portion thereof; and recommended that the advertisement be published in certain papers in the States and Territories named. This recommendation having been approved by the honorable Secretary, of the same date, the lands were advertised from May 18, 1871, to July 25, 1871, at which latter date the sealed bids were opened.

Under date of 11th September last this office submitted to the honorable Secretary a schedule, numbered 1, embracing all the bids on quarter-sections or subdivisions of the same; a schedule, numbered 2, embracing all the highest bids, and also a schedule, numbered 3, showing the bids of Messrs. Smith and Van Doren, whose bid was four dollars per acre for the lands embraced within the diminished reserve, and two dollars per acre for the trust lands, upon the condition, however, that the whole of both classes of said lands should be awarded to them. In the letter submitting these schedules it was shown that the total amount that would be realized, if sale should be made and payment received in accordance with the bid of Messrs. Smith and Van Doren, would be as follows, viz:

| | |
|---|--------------------|
| Trust lands, 137,658.13 acres, at \$2 per acre..... | \$275, 316 26 |
| Diminished reserve, 43,554.01 acres, at \$4 per acre..... | 174, 216 04 |
| Total..... | <u>449, 532 30</u> |

On the other hand, the whole amount that would be realized if awarded to the highest bidder for quarter-sections or subdivisions of the same, as indicated in the schedule numbered 2, would be as follows:

| | |
|-------------------------|--------------------|
| Trust lands..... | \$193, 384 32 |
| Diminished reserve..... | 81, 228 93 |
| Total..... | <u>274, 613 25</u> |

The excess of the amount to be realized from the bid of Messrs. Smith & Van Doren over the aggregate of the highest bids on quarter-sections being \$174,919 05.

It was further shown that the aggregate number of acres which would remain unawarded, if the awards should be made in accordance with schedule numbered 2, would be—trust lands, 33,010 acres; diminished reserve, 29,723 acres; and attention was invited to the probability, arising from the fact of no bids being made, that these lands were the poorest and least available of those offered for sale.

Under date 29th September last the honorable Secretary of the Interior returned to this office the papers submitted, and referring to the question whether the Smith & Van Doren bid should be accepted, inclosed opinion of the honorable Attorney General, dated the 18th of same month, answering the question in the negative, as to accept the bid "would defeat the plain language of the treaty." The bid was therefore rejected.

Under date of 31st October last the honorable Secretary informed this office that he had concluded to reject all bids for the lands of the Kansas Indians, and directed that the bidders be notified accordingly. The honorable Secretary also inclosed a communication from Superintendent Hoag, dated October 24, 1871, (in reply to Department instructions,) in which he stated that he had visited and counseled with the Kansas Indians, and conferred with their agent in respect to their interest arising from the sale of their lands and their removal south; that, from personal observation and from reliable information, he was well advised as to the character and value of said lands, and expressed the opinion that, inasmuch as the same were well advertised and in market all summer, the lands on which bids were made, as by schedule 2, hereinbefore referred to, comprise all that are salable or desirable; that, moreover, the remaining 62,733 acres, on which no bids were made, would (if the legal bids were accepted) be in fragmentary lots, scattered over a large area, and that, from both these considerations, they would not, if subject to a forced sale within a brief period, probably bring over one dollar per acre, say \$62,733, which amount, added to the legal bids of \$274,613 25, would give a fund to the tribe of only \$337,346 25, falling below Smith & Van Doren's bid \$112,186 05.

The superintendent further stated that this latter amount, if saved to the tribe, as in justice to them it should be, would afford a fund nearly sufficient to pay their outstanding indebtedness; that he believed it would largely facilitate the sale of these lands and augment the amount realized therefrom to have the same appraised, which could be done in a brief period and with small expense; and he therefore recommended that Congress be asked to empower the Secretary of the Interior to put the lands in market to the highest bidder or bidders, for cash, at prices not below the appraisal, and that the same be awarded to such bidder or bidders, in parcels or in whole, at highest aggregate offers, which he believed would not fall short of \$500,000 for the entire body of these lands.

The above statement comprises all the recent action of the Department and of this office relative to the sale of the lands referred to in the memorandum of the honorable Assistant Secretary.

Very respectfully, your obedient servant,

F. A. WALKER,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

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